debito justitiae as being in any way inconsistent with what I have stated. It merely means that unless there is something in the circumstances of the case which make it right to refuse the relief sought, the Court will grant it, and that that is the way in which the Court will and must on ordinary principles exercise its discretion."

Having regard to that exposition of the law, I think it is sufficient that I should say that in this case before the applicant could have succeeded before the Court in obtaining an Order for ejectment he would have had to have proved to the Court not only that neither the tenant nor any member of his family was in occupation of the premises or any part thereof, but also that the tenancy had been determined according to law. This is expressly provided by sub-section (3) of section 13 of Ordinance No. 6 of 1948, as amended by Ordinance No. 61 of 1949.

The tenancy was a monthly one and there was no termination of the tenancy in accordance with law. It is true that the applicant's then solicitor had written to the respondent on the 28th March, 1951, requiring him to surrender the tenancy of the said premises to the applicant before his departure on leave. This is not a legal notice to quit in the case of a monthly tenancy.

That being so it is quite clear to me that even if the Rent Assessment Board had given the applicant permission to apply to a Court for an Order of Ejectment his application for such an order must have failed.

In these circumstances, having regard to the decision of the Court of Appeal in the case to which I have referred above, this motion fails and is dismissed with costs.

Motion dismissed.

AH binti BAKAR v. ITAM bin SA'AD.

[Orig. Civ. Juris. (Briggs, J.) February 23, 1952]

[Alor Star — Civil Suit No. 178 of 1951]

Limitation — Limitation Enactment (Kedah) — Administration — Fraud — Limitation on and concealed — Express trust.

The administrator of a deceased person had land belonging to the estate transferred to him in his own name and not as representative of the deceased.

Held, as the beneficiaries were not aware of the fact that the land was registered in the name of the administrator time began to run only from the date such fraud came to their notice.

Held further, applying equitable principles the Court will not permit an express trustee to rely on the Limitation Enactment, at least until six years after the beneficiaries are, or ought reasonably to have been, aware of the breach of trust on which they desire to sue, whether such breach is or is not fraudulent.

Cases referred to :—

(1) *Gibbs v. Guild* (1882) 9 Q.B.D. 59 at 64.

(2) *Hunter v. Gibbons* (1856) 1 H. & N. 459.

CLAIM for a transfer of land.

Ismail Khan for the plaintiff.

Defendant in person.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Briggs, J. : — The plaintiff as administratrix *de bonis non* of the estate of her deceased father Bakar bin Haji Ariff claimed against the defendant as administrator of his deceased father Md. Sa'ad bin Omar a transfer of the land comprised in Surat Putus Kechik No. 4227, Mukim of Jerlon. Md. Sa'ad had been Bakar's attorney up to the time of Bakar's death and for this reason Letters of Administration were granted to him, although he was not a beneficiary. One asset of the estate was a beneficial interest by purchase in the land comprised then in Surat Putus Lama No. 2677, Mukim of Jerlon, but now in S.P.K. No. 4227, Jerlon. Md. Sa'ad, as administrator, obtained an order of Court for specific performance of the sale agreement; but owing to a pure error, for which Md. Sa'ad must accept the initial responsibility, the land was transferred to Md. Sa'ad personally, and not in terms "as representative" of Bakar deceased. At the hearing, though not in his defence, the defendant quite frankly and honestly admitted all this, and stated that his only defence was that of limitation. The transfer to Md. Sa'ad was made on the 27th August, 1932, so that approximately eleven years and two months had run for purposes of limitation, if time ran from the transfer.

The plaintiff claimed that limitation did not run, on the grounds of express trust and also concealed fraud. Dealing first with the second of these, it was alleged by the plaintiff, and not disputed, that the beneficiaries of Bakar's estate, while perfectly aware that the land in question formed part of that estate, were unaware that it was registered in Md. Sa'ad's own name, at least until April, 1948, when the defendant applied for Letters of Administration of his estate and included this land among the alleged assets. At all times prior to Md. Sa'ad's death, as the plaintiff claims, Md. Sa'ad duly distributed the income of the land to the beneficiaries. This is formally denied in the defence, but that document is a typical piece of petition writers' sharp practice, and the defendant did not really deny the truth of the plaintiff's allegation. That being so there was clearly no claim of right by

Md. Sa'ad, or apparently by his estate, until the petition for administration. I think that, if his own mind Md. Sa'ad formed an intention to defeat the trust either on first obtaining the title or at any later time before his death, that was a fraudulent intention which might have given rise to a right of action forthwith in the beneficiaries, but, if so, it was also fraudulently concealed from them at all times. Kedah Limitation Enactment, section 30. Time never began to run until 1st October 1949, as Md. Sa'ad died during the suspension of limitation. (The proceedings in L.A. 62/48 show the date to have been 16th September, 1947).

I accepted the plaintiff's contention on the other ground also. The Kedah Limitation Enactment ground also. The Kedah Limitation Enactment contains no provision extending time or excepting from its operation any cases, where the action is by a *cestui que* trust against an express trustee. The Limitation Act, 1623, (21 Jac.I.c.16) equally contains no such provision. On the other hand suits for equitable remedies to which there was no analogous legal remedy at common law were not within that Act at all. (Halsbury, Complete Statutes Vol. 10, 430). Therefore, although this is a "pure" Chancery matter, the correct analogy is to be found, I think, in the practice of the Chancery Courts in dealing with cases which might have been brought on the common law side. In *Gibbs. v. Guild*[1], Lord Coleridge, C.J., said :—

"I apprehend that, to state it shortly, the principle laid down by him is this, the Statute of Limitations does really in a sense bind Courts of Equity as much as it binds the Courts of Law, for this reason, says Lord Redesdale, that equity follows the law; and that in general what are the legal rights will be also the equitable rights of suitors, and in ordinary cases the Statute of Limitations applies, not, he is careful to say, by analogy, but by reason of the obedience which the Courts of Equity owe to the statute; but it has always been the principle of the Courts of Equity, while admitting the existence of legal rights, to take care that the particular suitors before them shall not be allowed to avail themselves of those legal rights in cases where it would be unjust. I therefore do not agree that Courts of Equity have, in the language in Hunter v. Gibbons[2], engrafted an exception upon the Statute of Limitations. It all depends, no doubt, upon what is meant by those words. If by engrafting an exception upon the statute is meant that a Court of Equity prevents a particular person from taking advantage of the statute, then no doubt that is true, but if it is meant to say that a Court of Equity by what it has done has altered the terms of the statute, then, with great respect, I demur to it. What I wish to convey is, that I understand the Courts of Equity to deal with the Statute of Limitations as they deal with every other legal right, whether existing by statute or common law, not by abrogating it, but by saying, on principles well understood in those Courts, that in some particular cases it is unjust that the party should be allowed to exercise those rights. They say that where the cause of action and the knowledge of the cause of action are contemporaneous, there the statute runs in Courts of Equity as it runs at common law, but that where the existence of the cause of action is concealed from the person who ought to take advantage of it by the fraud of the person who creates it, such person shall not take advantage of the wrong which he himself has done, and that a fresh cause of action accrues from the moment that the fraud is discovered, and that to that fresh cause of action the Statute of Limitations will be applied by the Courts of Equity."

It is to be observed that the flexibility with which the Courts of Equity applied the Statute did not depend on the narrow ground of their being not technically within its wording because proceedings in Chancery were "suits" and not "actions". Lord Coleridge makes it clear that they were bound by the statute and did not, in any general sense, engraft exceptions on it. They did, however, by operating on the conscience, prevent certain persons in certain circumstances from relying on the Statute where it would be unjust to do so, and that practice is now followed by the Common Law Courts in similar cases. If in general any action by a *cestui que* trust against an express trustee were by the law of Kedah barred after six years under section 26, the consequences would be very grave. By no means every breach of trust is fraudulent, and the relation of trustee and *cestui que* trust is such that, without any vestige of fraudulent concealment, the *cestue que* trust may well remain in ignorance of the breach for many years. Assuming that the loss accrued at or soon after the time of the breach (e.g. failure to change a speculative investment which later became worthless), all remedies might be barred long before the *cestui que* trust first became aware of the facts. I cannot believe that this was the intention of the legislature. I felt bound therefore to apply in this case the principle evolved by the Courts of Equity and to say that this Court will not permit an express trustee to rely on the Enactment, at least until six years after his beneficiary is aware, or ought reasonably to have been aware, of the breach of trust on which he desires to sue. On this principle, as there was no knowledge of any breach of duty at any time prior to Md. Sa'ad's death, the action is again in time.

The matter can be put in another way, by saying that, as Md. Sa'ad received this land as an express trustee for the beneficiaries of Bakar's estate and did nothing to defeat their equitable title prior to his death, there was no actionable breach of trust until his administrator claimed the land beneficially. At all times before that there was a right in the beneficiaries, or the administrator *de bonis non* to sue for execution of the trusts, but that right was renewed *de die in diem*, and could not therefore be defeated by limitation.

The defence of limitation having failed, I ordered transfer of the land as prayed.

Claim allowed.